

#50069

**VOLUNTARY AGREEMENT CONCERNING THE ISSUANCE OF C/R  
LICENSE FOR SALE OF ALCOHOLIC BEVERAGES**

**Application # 50069**

**License # 60162**

**Location: 2008-2010 18th Street, N.W.**

**THIS AGREEMENT**, made and entered into this 25<sup>th</sup> day of July, 2000, by and between the undersigned Protestants and Kerry R. Newman, Trading as The Epiphany (hereinafter the "Applicant"), witnesseth:

**Whereas** Applicant has filed an application with the District of Columbia Alcoholic Beverage Control Board (hereinafter the "Board") for the issuance of a Class C/R License to operate as a *bona fide* restaurant as defined in the D.C. Code §§ 25-103(14) and 25-103(25) at premises proposed to be known as The Epiphany, located at 2008-2010 18th Street, N.W., Washington, D.C. 20009 (hereinafter the "establishment");

**Whereas** Protestants have filed various protests before the Board opposing the issuance of such license;

**Whereas** in recognition of the Board's policy of encouraging parties to a protested proceeding to settle their differences by reaching voluntary agreements, the Parties hereto desire to enter into a voluntary agreement whereby (1) Applicant will agree to adopt certain measures to address the Protestants' concerns and to include this agreement as a formal condition of his application, and (2) Protestants will agree to the issuance of the license and withdrawal of their respective protests, *provided* that such agreement is incorporated into the Board's order approving the license, which order is thereby conditioned upon compliance with such agreement;

**Now, Therefore**, in consideration of the mutual covenants and undertakings memorialized herein, and in order to ensure the peace, order, quiet, health, and safety of the surrounding neighborhood, the Parties hereby agree as follows:

**I. Build-Out Phase**

**A. Architectural Plans**

1. Applicant shall design and build out the premises, or shall cause the premises to be designed and built out, to include a full-service kitchen of a size adequate to serve meals to the maximum number of seated patrons that may patronize the establishment at any given time, as provided in paragraph II.A.3.

2. Applicant shall design and build out the premises, or shall cause the premises to be designed and built out, to include no fewer than two public

restrooms on each level, including toilet and washing facilities in all restrooms and urinal facilities in at least one restroom on each level.

3. a. Applicant shall provide the Protestants with an opportunity to review and comment on a final set of architectural and mechanical plans and drawings at least seven (7) business days prior to applying for any building, construction, electrical, plumbing, mechanical, or other work permit, to ensure compliance with the two preceding paragraphs and with the additional specific build-out requirements and prohibitions set forth in subsection I.C below.

b. At or about the time this Voluntary Agreement is signed, the Protestants will provide the Applicant with the names, addresses, and phone numbers of at least two designated representatives chosen from amongst themselves, either (or any) of whom may receive a set of such plans and drawings from the Applicant for the purpose of sharing such plans and drawings with the other Protestants and any architect or other expert they may wish to consult. The Applicant agrees to make actual contact with at least one such designated representative, and they shall make mutually convenient arrangements for the delivery or receipt of such plans and drawings. The period of seven (7) business days referred to in subparagraph I.A.3.a above shall commence at the time a designated representative of the Protestants receives such plans and drawings.

4. a. In connection with any permit application, Applicant shall not submit to the District of Columbia Government any architectural or mechanical plans or drawings that differ in any material respect from those reviewed by the Protestants under the preceding paragraph, unless Applicant has first given the Protestants an opportunity to review and comment on such differing plans or drawings at least seven (7) business days prior to making such application. A "material" difference under this paragraph is one that would significantly alter the character of the establishment or the operations to be conducted on the premises, including any alteration that would violate any of the terms or conditions of this agreement.

b. Delivery and review of any such altered plans or drawings shall be handled in the same manner and using the same procedure described in subparagraph I.A.3.b above.

#### B. Permits and Construction

1. Applicant shall not begin or undertake, or permit others to begin or undertake, any construction, build-out, alteration, installation, or other work on the premises requiring a permit from the District of Columbia Government until after the appropriate permit or permits have been issued, and shall not permit any such work to be conducted on the premises while any applicable "stop work" order is effective.

2. During the performance of all such work, Applicant:

a. shall keep the sidewalk, public alley, and rear area adjoining the premises free and clear of all work-related trash and debris;

b. shall not permit work-related equipment, materials, and vehicles to be stored on the sidewalk or in the public alley while work is not being performed; and

c. shall not permit the sidewalk or public alley to be made impassable to pedestrians or vehicles, respectively, by work-related equipment, materials, or vehicles while work is being performed.

C. Specific Build-Out Requirements and Prohibitions

1. Applicant shall include in his architectural and mechanical plans and drawings, and shall construct or install, the following specific elements:

a. All roof-mounted mechanical equipment (including HVAC, kitchen exhaust, or otherwise) shall be placed as close as possible to the center of the premises' roof, and all fans, blowers, or similar equipment shall be directed to exhaust in an easterly or southeasterly direction toward 18th Street, and not toward any adjacent residential premises. In addition, the operation of this equipment will be acoustically shielded so that the machinery will not be significantly audible to nearby residents.

b. The exterior rear area adjoining the establishment, and the exterior rear area adjoining 2006 18th Street, N.W. (expected to be known as Staccato), shall be regraded and redecked with new concrete, and the steps currently leading from such area to the public alley shall be replaced by a concrete ramp to facilitate the removal of trash and the control of rats and other pests. The regraded and redecked concrete area shall slope to one or more site drains to eliminate standing water. (The Parties acknowledge that Applicant will not have direct control of the exterior rear area behind 2006 18th Street, N.W., but Applicant agrees to seek permission from the Landlord and/or from Staccato to perform such work and to pay for same in its entirety if neither the Landlord nor Staccato will agree to contribute to the cost.)

c. The public entryway or vestibule shall be constructed to permit the subsequent addition of a second door (air lock) if requested by Protestants Ashley Condominium Association, Vernon House Condominium Association, or Laurie Clarke as provided in paragraph II.B.8 below.

d. All windows, walls, skylights, floors, doors, and ceilings (including the roof) of the building will be soundproofed in a manner at least as effective as the soundproofing design of the nearby restaurant known as 18th & U Duplex Diner, located at 2002-2004 18th Street, N.W., so that no sound or vibration resulting from the operation of the establishment will be audible or felt outside the confines of the establishment. (A copy of a letter describing such design is attached hereto and incorporated herein.)

e. The roof will be designed in such a way as to ensure that drainage will at no time threaten to flood any adjacent property.

f. Any rear door located in an area that is accessible to patrons in the ordinary course of business shall be equipped with an appropriate emergency alarm system that inhibits non-emergency use by patrons.

2. Applicant shall omit from his architectural and mechanical plans and drawings, and shall *not* construct or install, the following specific elements:

a. No windows shall be built into the alley wall or rear wall of the premises.

b. No roofdeck, sidewalk café, backyard patio, or other exterior facilities for the service of patrons, whether standing or sitting, shall be planned or constructed.

## II. General Conditions of Operation

### A. Commencement and Hours of Operation, and Capacity

1. Without regard to the date on which Applicant receives final approval from the Board of its C/R License, the establishment shall not commence serving alcoholic beverages until after Applicant has secured a restaurant permit from the District of Columbia government, the kitchen facilities in the establishment have been made fully operational, and the Applicant has begun serving a regular menu during its permitted hours of operation.

2. The hours of operation shall be 11:00 a.m. – 11:00 p.m. on Monday through Thursday, 11 a.m. to midnight on Friday and Saturday, and 10:00 a.m. – 11 p.m. on Sunday. Except as provided in paragraph 1 of this subsection, alcohol may be served during these hours.

3. Table-seating capacity shall not exceed 108 (64 on main floor, 44 on upper level). Bar area capacity shall not exceed 33 (21 on main floor, 12 on upper level). The total of seating and standing capacity in the establishment shall not

exceed the lesser of 141 or such lower number as the Fire Marshal may require pursuant to applicable regulations.

B. Noise, Entertainment, and Dancing

1. Applicant acknowledges familiarity with and will comply with all noise-control provisions of District of Columbia law and regulations. In accordance with 23 DCMR § 905.1 *et seq.*, as in effect on the date of this agreement, Applicant shall permit no sound or vibration resulting from the operation of the establishment to be audible or felt outside the confines of the establishment.

2. The doors and windows of the premises will be kept closed at all times during business hours when music is being played or a sound amplification device is being used in the premises, except when persons are in the act of using the door for ingress to or egress from the premises.

3. Windows at the front of the building will be closed and secured no later than 11 p.m. each night, even when background music is no longer being played in the establishment.

4. At no time and under no circumstances will live music be performed in the establishment, nor will Applicant employ or allow any person to function as a "disk jockey" or "DJ" (i.e., an entertainer who programs or announces a series of musical selections).

5. Music will not be an advertised feature of the establishment.

6. Music will be limited to sound recordings intended to serve as a background atmospheric feature of the establishment.

7. Dancing will not be permitted in the establishment.

8. At any time after the 90th day following the commencement of alcohol service in the establishment, in the event that significant noise emanates from the establishment when the front door is opened, Protestants Ashley Condominium Association, Vernon House Condominium Association, or Laurie Clarke may request in writing that Applicant install a second door in the front entryway vestibule to create an "air lock" that will muffle or eliminate such noise. Applicant shall install such second door within 30 days after the date of such written request.

C. Crowd Control and Consideration

1. The establishment will provide personnel to control patrons entering, waiting to enter, or leaving the premises, and will make every reasonable effort to

prevent and disperse loitering and any other source of noise or disturbance in the areas in front of, alongside, or to the rear of the premises, especially during business hours and at closing times, and to cause patrons to leave those areas quietly at closing.

2. No patron will be permitted to leave the premises (i.e., the interior of the building) carrying any glass, cup, bottle, or other beverage receptacle.

3. No pay telephone will be placed on the exterior of the establishment.

4. Applicant will encourage employees and patrons to be considerate of neighboring residents at all times. Applicant will encourage patrons and employees leaving the establishment to keep conversations and noise down from 11:00 p.m. to 7:00 a.m.

D. Trash Removal and Rats

1. Applicant shall maintain regular trash/garbage removal service, with pickups at hours and with frequencies in full compliance with District laws and regulations, but in any event no less often than three times per week. One of these pickups shall occur on either Saturday or Sunday, and if it occurs on Saturday the next regularly scheduled pickup shall be on Monday. Applicant shall deposit trash and garbage only in rodent-proof dumpsters or containers, and shall ensure that the covers or lids on such dumpsters or containers fit properly and are kept fully closed and secured except when trash or garbage is being added or removed.

2. In addition to the commitments set forth in paragraph 1 of this subsection, Applicant will make every reasonable effort to eliminate food sources for rodents and eliminate the rat population, including, at a minimum, the following:

a. Ensure that the sidewalk and public alley adjacent to the premises, as well as the trash and dumpster area in the rear of the premises, remain clean and are maintained free of trash, garbage, debris, brush, and weeds;

b. Dispose of trash and garbage in the dumpsters or containers no later than midnight on Sunday nights through Thursday nights, and no later than 1 a.m. on Friday and Saturday nights, except that no bottles, glasses, or cans shall be disposed of outside after 11 p.m. on Sunday through Thursday nights or after midnight on Friday and Saturday nights;

c. Maintain a contract with a professional exterminator for regular rat baiting, extermination, and disposal; and

d. Hose down and disinfect the sidewalk and rear area daily and take other steps as necessary to eliminate odors from such areas.

3. Applicant shall provide for the proper removal of grease and fatty oils from the establishment, and shall not permit grease or fatty oils to be deposited or disposed of in any trash dumpsters or containers.

4. Applicant shall not permit any trash or garbage to be deposited in the trash cans or dumpsters of any neighboring condominium, apartment building, or other residence.

E. Other Exterior Conditions and Operations

1. No valet parking will be offered to patrons, and employees will be encouraged to walk or take public transportation to or from their jobs. As an inducement to employees to take public transportation, Applicant agrees to offer discount Metro commuter passes (or an allowance for same) as a benefit of employment.

2. Applicant shall assist in the maintenance of the public alley, and the space in front of the establishment to a distance of at least 18 inches outward from the curb, as needed to keep them free of trash, shall remove snow and ice from the sidewalk, and shall comply with all applicable D.C. laws and regulations in these respects.

3. The roof will be maintained in such a way as to ensure that drainage will at no time threaten to flood any adjacent property. (It is understood that the owner of the property has the ultimate legal responsibility in this regard.)

4. Applicant shall not permit the sidewalk or public alley to be obstructed by delivery trucks, parked vehicles, or other equipment.

5. Applicant agrees not to promote or participate in bar or pub "crawls".

6. Applicant will either paint over or remove existing graffiti from the exterior walls of the premises, and will regularly paint over or remove such new graffiti as may appear on the exterior walls.

7. Applicant shall install security lighting on the exterior wall of the building abutting the public alley which shall remain lit from dusk to dawn; however, such lights shall be focused downward onto the pavement so as not to disturb the sleep or environment of residents in adjacent residential units.

8. The Protestants acknowledge that the Applicant's establishment will be located immediately adjacent to another ABC-licensed premises (expected to be known as Staccato), with which the Applicant's establishment will share a

common wall, a common rear exterior area, and a common landlord. The Protestants further acknowledge that the Applicant is not and shall not be responsible for problems of noise, crowd control, trash removal, rats, traffic, or parking emanating or stemming from the operation of Staccato. The Protestants will make good faith efforts to monitor these issues and to distinguish between the two premises in future protests or complaints. The Applicant will nonetheless make reasonable good faith efforts to foster cooperation with Staccato in order to address the community concerns reflected in this Voluntary Agreement and, in the event such efforts are unsuccessful, will cooperate with the Protestants in efforts to address their concerns with Staccato. For purposes of this paragraph, the term "Staccato" includes any subsequent business, whether ABC-licensed or not, located in the same premises.

### III. Posting and Distribution of This Agreement

A. Applicant shall cause all employees to be informed of the above terms and of their responsibility to comply with these terms. Every employee shall be given a copy of this Agreement at the time of hiring and instructed to become familiar with and comply its terms. If any employee is not fluent in or able to read English, Applicant shall ensure that the above terms are explained to such employee in a language or manner calculated to ensure that such employee understands them and his or her responsibilities under them.

B. Applicant shall cause all contractors working in, on, and around the premises during build-out and following the commencement of regular business operations to be informed of the above terms and of their responsibility to comply with these terms.

C. Applicant shall permanently post a copy of this Agreement on the premises in a conspicuous location where all employees and contractors will be able to take notice.

### IV. Effect of Voluntary Agreement, Other Terms

A. The terms and conditions of this Agreement shall remain in effect for the life of the Applicant's license, whether or not such license is transferred to another person, and such terms and conditions shall be applicable to and binding on Applicant's successors and assigns.

B. Failure of Applicant to comply with any of the terms of this Agreement shall constitute a breach thereof and shall serve as grounds for any one or more of the undersigned Protestants to request, or for the Board to initiate, proceedings for a show-cause hearing under 23 DCMR § 1513.5 of the Alcoholic Beverage Control regulations.

C. This Agreement can be modified only by mutual written consent of all the parties.



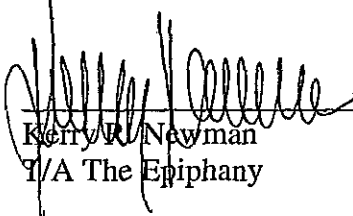
D. In addition to the foregoing, Applicant will operate in compliance with all applicable laws and regulations.

V. Withdrawal of Protests


Protestants agree to the approval of the license and to the withdrawal of their respective Protests, *provided* that this Voluntary Agreement is incorporated into the Board's order approving the license, which order is thereby conditioned upon compliance with such Voluntary Agreement, and *provided further*, that Applicant agrees, prior to seeking actual issuance of such approved license under 23 DCMR § 405.3, to await final inspection of the premises by the Board or its staff, in the presence of at least one Protestant or authorized representative of a Protestant, to verify full compliance with section I of this Voluntary Agreement


ACCEPTED AND AGREED:

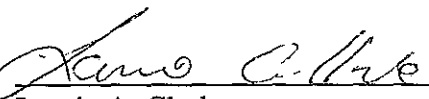
THE APPLICANT

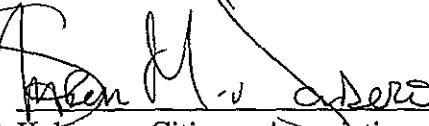
 7/25/00  
Kerry R. Newman Date  
T/A The Epiphany

THE PROTESTANTS


 7/23/00  
Ashley Condominium Association Date  
By: Eric Humperst (AUTHORIZED REPRESENTATIVE)

 7/24/00  
Crescent Condominium Association Date  
By: Jon Desenberg, President of the Board

 7/23/2000  
Laurie A. Clarke Date

 7/24/00  
Kalorama Citizens Association Date  
By: SHARON M. DONDERO VP/KCA

 7/23/00  
Alan J. Roth Date

 7/23/00  
Vernon House Condominium Ass'n Date  
By: MIMI PAPPAS, PRESIDENT

Victor J. Miller 7/23/00  
Victor J. Miller Date

Linda E. Spetli 7/24/00  
Advisory Neighborhood Comm'n IC Date  
By: LINDA E. SPETLI, ~~PRESIDENT~~ CHAIRPERSON

**BEFORE  
THE DISTRICT OF COLUMBIA  
ALCOHOLIC BEVERAGE CONTROL BOARD**

**In the Matter of :**

Kerry R. Newman  
t/a The Epiphany

Application for a Retailer's Class  
CR License – new

2008-10 18<sup>th</sup> Street, N.W.  
Washington, D.C.

Case no. 50069-00099P

Alan J. Roth, Michael A. Gould, President, on behalf of the Kalorama Citizens Association, Richard Bernstein, Mimi Pappas, President, on behalf of the Vernon House Condominium Association, Jon M. Desenberg, President, Condominium Board of Directors, Laurie A. Clarke, Eric Humpert, Peter Schott, Vice Chair, Advisory Neighborhood Commission 1C, and Linda Softli, Chair, Advisory Neighborhood Commission 1C, Protestants

**Kerry R. Newman, Applicant**

**BEFORE: Roderic L. Woodson, Esquire, Chair  
Vera Abbott, Member  
Charles Burger, Member  
Judy Moy, Member  
Ellen Oppenheimer, Esquire, Member  
Audrey E. Thompson, Member**

**ORDER ON WITHDRAWN PROTEST AND VOLUNTARY AGREEMENT**

This matter, having been protested, came before the Board for public hearing on July 26, 2000, in accordance with D.C. Code Section 25-115(c)(5)(1999 Supp.), providing for the protestants to be heard. Alan J. Roth, Michael A. Gould, President, on behalf of the Kalorama Citizens Association, Richard Bernstein, Mimi Pappas, President, on behalf of the Vernon House Condominium Association, Jon M. Desenberg, President, Condominium Board of Directors, Laurie A. Clarke, Eric Humpert, Peter Schott, Vice Chair, Advisory Neighborhood Commission 1C, and Linda Softli, Chair, Advisory Neighborhood Commission 1C, filed timely protests.

The official records of the Board reflect that the parties have now reached an agreement

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t/a The Epiphany  
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that has been reduced to writing, and has been properly executed and filed with the Board.

Pursuant to the agreement dated July 25, 2000, the protestants have agreed to withdraw the opposition, provided however, the Board's approval of the pending application is conditioned upon the licensee's continuing compliance with the terms of the Agreement.

Accordingly, it is this 9th day of August 2000, **ORDERED** that:

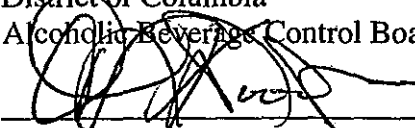
1. The opposition of Alan J. Roth, Michael A. Gould, president, on behalf of the Kalorama Citizens Association, Richard Bernstein, Mimi Pappas, president, on behalf of the Vernon House Condominium Association, Jon M. Desenberg, president, Condominium Board of Directors, Laurie A. Clarke, Eric Humpert, Peter Schott, Vice Chair, Advisory Neighborhood Commission 1C, and Linda Softli, Chair, Advisory Neighborhood Commission 1C Michael Bethea, president, on behalf of the Brightwood Community Association, be, and the same hereby, is **WITHDRAWN**;

2. The application of Kerry R. Newman t/a The Epiphany for a retailer's class CR license (new), located at 2008-10 18<sup>th</sup> Street, N.W., Washington, D.C., be, and the same hereby, is **GRANTED**;

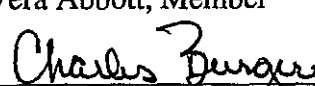
3. The above-referenced agreement between the parties, be, and the same hereby, is **INCORPORATED** as part of this **ORDER**, and:

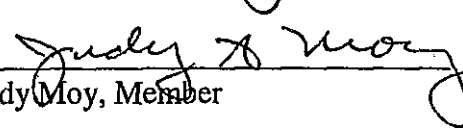
4. Copies of this Order shall be sent to the Protestants and the Applicant.

District of Columbia  
Alcoholic Beverage Control Board

  
Roderic L. Woodson, Esquire, Chair

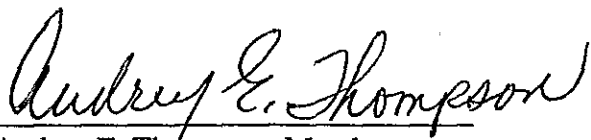
  
Vera Abbott, Member

  
Charles Burger, Member

  
Judy Moy, Member

  
Ellen Opper-Weiner, Esquire, Member

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t/a The Epiphany  
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Audrey E. Thompson, Member